

DEC 21 1976

MICHAEL RODAK, JR., CLERK

IN THE

**Supreme Court of the United States**

October Term, 1976  
No.

**76-852**

LAWRENCE E. OATMAN,

Petitioner-Appellant,

v.

STATE TAX COMMISSION,

Respondent-Respondent.

ON APPEAL FROM THE APPELLATE  
DIVISION OF THE SUPREME COURT OF  
THE STATE OF NEW YORK,  
THIRD DEPARTMENT

**JURISDICTIONAL STATEMENT**

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(5827)

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases:</u>	
Street v. New York, 394 U.S. 576.	4
Goldburg v. Kelly, 397 U.S. 254..	4,8
In Re Murchison, 349 U.S. 133....	8
Wong Yang Sung v. McGrath, 339 U.S. 33.....	8
<u>Statute:</u>	
United States Constitution -	
Amendment XIV, Section 1.....	6

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JURISDICTIONAL STATEMENT

The Appellant, as required by

Rules 13 and 15 of the Supreme Court Rules, makes the following jurisdictional statement:

- a. The only opinion was rendered by the Appellate Division of the Supreme Court, State of New York, Third Department. The official report was 50 A.D.2d 1015. The unofficial report was 377 NYS2d 659.
- b. (i) This proceeding was commenced in a Special Term of the Supreme Court of New York State, County of Albany, for an order annulling an income tax deficiency against the Petitioner by the State Tax Commissioner, the Respondent. The proceeding was initiated under Article 78 of the Civil Practice Law and Rules of New York.

(ii) The Order to be reviewed was entered December 30, 1975 and a copy served with Notice of Entry by the Respondent on the Petitioner's attorney on September 27, 1976. Permission to appeal to the Court of Appeals of New York State was denied by order entered June 8, 1976. The Notice of Appeal was filed on October 19, 1976 in the office of the Clerk of the Appellate Division of the Supreme Court of the State of New York, Third Department.

(iii) Jurisdiction to review the Order is conferred by Title 28, U.S.C.A., Section 1257(2).

(iv) This Court's jurisdiction in appeals similar to this appeal is upheld

by: Street v. New York, 395 U.S. 576;

Goldburg v. Kelly, 397 U.S. 254.

(v) The lower court's decision in favor of the validity under the Constitution of the United States of State Tax Commission Rules of Practice, Part 601, Title 20, Official Compilation of Codes, Rules and Regulations of the State of New York, Section 601.6, which reads as follows:

601.6 Hearing officers.

The State Tax Commission has designated members of its staff as hearing officers, pursuant to section 689 of the Tax Law. Hearings upon petitions to the Tax Commission with reference to personal income tax or unincorporated business tax will be conducted by these hearing officers, and the evidence and arguments in opposition to the petitions will be presented by representatives of the Income Tax Bureau.

The hearing officer who conducts any such hearing will transmit to the Tax Commission the entire record, including the stenographic transcript of the hearing, exhibits offered in evidence and any briefs filed by the petitioner and the Income Tax Bureau, with his recommendations. The Commission will review the record, make its decision thereon and notice of its decision will be mailed to the petitioner as provided in the Tax Law.

c. The question presented by this appeal is whether Section 601.6 of The Rules of Practice is unconstitutional. This Section allows the Respondent to act as judge, jury and prosecuting attorney all rolled into one. The Hearing Officer is a paid employee of the Respondent. He therefore lacks independence. The ultimate decision depends on the whim and caprice of the Respondent since the Hearing Officer only recommends a disposition



The Respondent makes all ultimate decisions. Appellant maintains that this procedure violates the due process clause of the United States Constitution (U.S. Constitution, Amendment XIV, Section 1). If a procedure is inherently unfair as in this case, it lacks procedural due process.

d. The facts of this case are that the Appellant filed a petition under Section 689 of the Tax Law of New York State for the redetermination of deficiency issued March 30, 1970, in the amount of \$1,176.46 for failure to file a tax return for the year 1967. A hearing was held on February 5, 1973 at the offices of the Respondent State Tax Commission before Nigel G.

Wright, a Hearing Officer of Respondent. Appellant contended he was not a domicile of New York and owed no taxes. In the lower court on an Article 78 Civil Practice Laws and Rules of New York, the Appellant brought up in his petition that the procedure used in the State Tax Commission was unconstitutional. The case was transferred directly to the Appellate Division of the Supreme Court of the State of New York, Third Department, from the Supreme Court of the State of New York, County of Albany, on motion of the Respondent. The Appellate Division decided in favor of the Respondent. Permission was denied to appeal to the Court of Appeals of the State of New York.

e. The cases state that in a hearing procedural due process is required. In Re Murchison, 349 U.S. 133; Wong Yang Sung v. McGrath, 339 U.S. 33. The hearing must be a meaningful hearing and not a sham. Goldburg v. Kelly, 397 U.S. 254. In our case, as stated earlier, the rules of procedure do not allow a meaningful hearing since the ultimate decision is made by the Respondent. In effect, the rules allow the Respondent to be judge, jury and prosecuting attorney.

f. The opinion of the Appellate Division of the Supreme Court of the State of New York, Third Department, dated December 23, 1975, was as follows:

SUPREME COURT - APPELLATE DIVISION  
THIRD JUDICIAL DEPARTMENT

December 23, 1975.

26072

In the Matter of LAWRENCE E. OATMAN,  
Petitioner,  
v.  
STATE TAX COMMISSION, Respondent.

Proceeding pursuant to CPLR article 78 (transferred to this court by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission which denied petitioner's application for a redetermination of a deficiency for New York personal income tax for the year 1967.

Following a hearing at which petitioner testified, respondent found that in 1966 and 1967 petitioner was employed as a seaman in the Merchant Marine and was assigned to a ship which sailed to and from New York City; that prior to 1967 he was a domiciliary of New York and resided in Jackson Heights, Queens, New York, with his wife and infant child, and continued to keep this residence for his wife and son during 1967, where he supported them; that during 1967 a typical trip on board ship would be for three week's time with a one night layover between trips; that petitioner claims no domicile in any legal jurisdiction other than New York, nor does it appear that he spent less than 31 days in New York during 1967. On these facts respondent

rejected petitioner's contention that he was not a domiciliary of New York State in 1967, and that, therefore, he did not owe income taxes for that year.

Respondent's determination is abundantly supported by the record. A person is a resident of the State subject to New York State personal income tax if he is domiciled in the State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than 30 days of the taxable year in this State. (Tax Law, § 605, subd. [a], par. [1]; 20 NYCRR 102.2.) It is clear that since petitioner has not even attempted to show that he acquired a new domicile in 1967, no change in domicile from New York could have been effected. (Rubin v. Irving Trust Co., 305 N.Y. 288, 306; Matter of Starer v. Gallman, \_\_\_ A D 2d \_\_\_ [decided herewith].)

We find no merit in petitioner's contention that the conduct of the hearing by a hearing officer who is an employee of respondent and the making of the ultimate decision by the respondent itself constitute a denial of due process. The hearing procedures were conducted pursuant to the rules and regulations of the State Tax Commission (20 NYCRR 601.6). Similar procedures are uniformly followed throughout the administrative agencies of the State, and it is not claimed that any member of the State Tax Commission or the hearing officer participated in the original determination under review made by the Director

of the Income Tax Bureau.

Determination confirmed, and petition dismissed, without costs.

HERLIHY, P. J., SWEENEY, KOREMAN, MAIN and REYNOLDS, JJ., concur.

g. The Order of the Appellate Division of the Supreme Court of the State of New York, Third Department, dated November 17, 1975, was as follows:

At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department held at the South Mall Justice Building in the City of Albany, New York, commencing on the 17th day of November, 1975.

PRESENT:

HON. J. CLARENCE HERLIHY  
Presiding Justice.

HON. MICHAEL E. SWEENEY  
HON. HAROLD E. KOREMAN  
HON. ROBERT G. MAIN  
HON. WALTER B. REYNOLDS  
Associate Justices.



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In the Matter of LAWRENCE E.  
OATMAN,

Petitioner, ORDER

-against-

STATE TAX COMMISSION,

County  
Clerk's  
Index No.  
3814-74

Respondent.

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The petitioner having instituted a proceeding pursuant to CPLR Article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission which denied petitioner's application for a redetermination of a deficiency for New York personal

income tax for the year 1967, and said matter having been submitted by the petitioner and argued by Francis V. Dow, Assistant Attorney General of counsel, for the respondent, and after due deliberation and the Court having rendered a memorandum-decision on the 23rd day of December, 1975, it is hereby

ORDERED, that the determination of the respondent be and the same hereby is confirmed and the petition dismissed without costs.

ENTER:

/s/ John J. O'Brien  
Clerk

DATED AND ENTERED: December 30, 1975.

A TRUE COPY

/s/ John J. O'Brien  
Clerk



h. A Notice of Appeal to the Supreme Court of the United States was duly served and filed on October 20, 1976 and read as follows:

APPELLATE DIVISION OF THE  
SUPREME COURT OF THE STATE OF NEW YORK  
THIRD DEPARTMENT

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LAWRENCE E. OATMAN,  
Petitioner,

-against-

STATE TAX COMMISSION,  
Respondent.

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I. Notice is hereby given that Lawrence E. Oatman, the appellant above-named hereby appeals to the Supreme Court of the United States from the final order of the Appellate Division of the Supreme Court of New York, Third Department,

entered December 30, 1975 and a copy with notice of entry served on the appellant's attorney on September 27, 1976.

II. This appeal is taken pursuant to 28 U.S.C.A. section 1257(2).

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